IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11474 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MANOJBHAI LALSING CHAUDHARY

Versus

DISTRICT MAGISTRATE

Appearance:

MR ANIL S DAVE for Petitioner No. 1

MR KAMEN N SHUKLA for Petitioner No. 1

MR RM CHAUHAN, AGP for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 15/10/2003

ORAL JUDGEMENT

1. By way of this Special Civil Application, the petitioner has challenged the order dated 05.06.2003

passed by the District Magistrate, Surat, against him, in exercise of powers under Section 3(1) of the Gujarat Prevention of Anti Social Activities Act, 1985 (hereinafter referred to as "PASA Act") declaring the petitioner to be a "bootlegger" within the meaning of the PASA Act, and directing the detention of the petitioner. In pursuance of the said impugned order in this petition, the petitioner is detained in jail since 05.06.2003.

2. The grounds served upon the petitioner and as placed on record reveal that the detaining authority took into consideration the fact that an offence came to be registered against the petitioner on 23.2.2003 under Sections 66(1)(b), 65(a)(e), 116(1)(b), 81 and 83 of the Bombay Prohibition Act, whereby foreign liquor worth of Rs. 72,690/- was seized from the possession of the petitioner. The detaining authority further relied upon two in-camera statements as recorded by sponsoring authority on 16.4.2003 and 17.4.2003 and verified by the detaining authority on 02.6.2003. The statements reveal the unreported incidents occurred on 3rd of March, 2003 and 2nd of April 2003. From the above material, the order impugned came to be passed against the petitioner.

3. Learned Advocate Mr.Kamen N.Shukla for learned Advocate Mr. Anil S.Dave for the petitioner and learned AGP Mr.R.M.Chauhan for the respondents were heard at length.

4. Out of various contentions raised on behalf of the petitioner, and controverted by the AGP, it appears that the matter can be disposed of on the sole ground whether the detention of the petitioner is bad in law on account of delay caused in passing the detention order. The chronological events revealed aforesaid emerges that the last offence came to be registered on 23rd February, 2003. Thereafter, two unregistered offences were relied upon, occurred on 31st of March and 2nd of April, 2003. However, in-camera statements could be recorded by the sponsoring authority only on 16th of April, 2003 and 17th of April, 2003. Again, the statements could be verified by the detaining authority only on 2nd of June, 2003 and consequently, the order came to be passed on 5th of June,2003. So, considering the date of solitary crime registered against the petitioner i.e. on 23.2.2003, the order came to be passed only on 5th of June, 2003. True, it is that, in the meantime, two unreported incidents, as narrated above, were relied upon by the detaining authority. But, at the same time, delay was caused in collecting the material and the verification of the statements. The facts of the case are, therefore,

squarely covered by a decision of this Court in the matter of ELESH NADUBHAI PATEL vs. COMMISSIONER OF POLICE, AHMEDABAD CITY, reported in 1997 (1) GLH 381. This Court in para 21 observed as under :

> 21. In the instant case, the last registered case is of May 20, 1996. The petitioner detenu was granted anticipatory bail by the competent Court. He was also granted regular bail subsequently. The impugned order of detention has been passed on November 05, 1996 i.e. after a delay of 5 months and 15 days. It is of course true that the detaining authority has relied on two incidents of 2nd October and 10th October, 1996, both unregistered cases. I have gone through the allegations. I fail to understand if the allegations are really of such a grievous nature, why the cases have not been registered against the petitioner. There appears to be some substance in the contention of the petitioner that these two unregistered cases have been referred only with a view to cover up the gap or to give life to a stale case. The unexplained delay makes a ground of detention not proximate, vitiating the order of detention itself. If I am to buttress my findings, I would say the reference may be made to the decision of the Supreme Court in Anand Prakash v. State of U.P., reported in AIR 1990 SC 516 and Pradeep Nilkanth v. S. Ramamurthy reported in 1993 (2) Suppli. SCC 61."

Therefore, the order impugned in this petition is required to be quashed on the ground that the proximity i.e. the live link between the objectionable activities of the petitioner and the passing of the order is snapped by delay in passing of the order.

5. In the result, this Special Civil Application is allowed with no order as to costs. The order impugned in this Special Civil Application passed by the District Magistrate, Surat, on 05.06.2003 under Section 3(1) of the PASA Act against the petitioner is quashed and set aside. Petitioner is directed to be set at liberty forthwith if he is not required to be detained in jail for any other purpose. Rule made absolute. DS permitted.

(J.R. Vora, J.)

p.n.nair